

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

RAUL GERARDO FAVELA, JR. §
VS. § CIVIL ACTION NO. 9:19cv93
BRYAN COLLIER, ET AL. §

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Raul Gerardo Favela, Jr. through counsel, filed the above-styled lawsuit pursuant to 42 U.S.C. § 1983. Plaintiff alleges the defendants failed to protect him from being attacked by other inmates. The court previously referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this court.

The defendants filed separate motions for summary judgment. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the motions be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Plaintiff filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

The magistrate judge's recommendation was based on the conclusion that there was not a genuine issue of material fact as to whether plaintiff exhausted his administrative remedies before filing this lawsuit. Plaintiff filed a declaration stating that he filed a grievance within about 5 days of the attack. In the grievance, he complained his injuries were the result of officials ignoring requests that he be moved because he was in danger. He also stated he filed an appeal concerning the matters raised in his initial grievance. In his objections, plaintiff contends that the assertions in his declaration are sufficient to create a fact issue concerning exhaustion of administrative remedies.

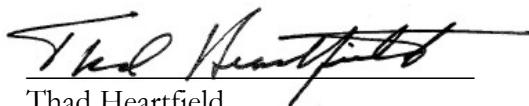
In *Kidd v. Livingston*, 463 F. App'x 311, 313 (5th Cir. 2012), the United States Court of Appeals for the Fifth Circuit held that in that case the plaintiff's conclusory assertions that he

exhausted administrative remedies and his production of an unprocessed grievance form were insufficient to created a genuine dispute as to whether the plaintiff exhausted administrative remedies. The plaintiff in *Kidd* asserted he timely filed a grievance and produced a copy of an unprocessed grievance form. The evidence of exhaustion in this case is substantially similar to the evidence in *Kidd*. As a result, the evidence in this case is insufficient to create a genuine issue of material fact as to whether plaintiff exhausted his administrative remedies. His objections are therefore without merit.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and the conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED** as the opinion of the court. The motion for summary judgment filed by defendants Alford, Collier and Livingston (doc. no. 37) and the motion for summary judgment filed by defendant Haynes (doc. no. 40) are **GRANTED**. A final judgment shall be entered in accordance with the recommendation of the magistrate judge.

SIGNED this the 11 day of May, 2022.



Thad Heartfield
United States District Judge